IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

FAO(MVA) NO._246 2000

Judgment Reserved on: **27.4.2007**

Date of Decision: 30.4.2007

M/s. A.K.M Construction ad Engineering Company

……Appellant

Versus

Master Naveen Kumar & others …… Respondent.

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The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? No.

For the Petitioners: ***Mr. Chadranarayan Singh, Advocate.***

For respondents; No.1 & 2 ***Mr. K.R. Thakur, Advocate with Mr. Virender Thakur, Advocate.***

For respondent: No.3. ***Mr. K.D. Sood, Advocate.***

Kuldip Singh, J

The owner of truck is in appeal against award dated 1.3.2000 passed by learned Motor Accident Claims Tribunal, Shimla In M.A.C.C. No.9-S/2 of 1997 whereby an award of Rs.1,71,584/- along with interest at the rate of 12% per annum from the date of filing the petition till payment has been made in favour of claimants and against both respondents, whose liability to satisfy the award was made joint and several. The compensation money was ordered to be shared equally by the claimants.

The parties in this judgment are referred in the same manner as referred in the impugned award.

Brief facts as pleaded in the claim petition are that petitioners are

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W*hether reporters of Local Papers may be allowed to see the Judgment- Yes*

minor son and daughter of deceased Kamla Devi, who died in an accident of truck No.HR 03A-0495 which took place on 15.10.1996 at Sonu Bungalow near Taradevi . Deceased Kamla Devi was on board of the aforesaid truck when it met with an accident. She was aged 30 years and petitioners were aged 8 years and 12 years respectively. Kamla Devi was a house wife and used to earn around Rs.3000/- per month by doing kitting and tailoring work. The truck was being driven by the father of the petitioners rashly and negligently who also died in the accident. A sum of rupees four lacs has been claimed by way of compensation.

The owner of the truck did not deny the accident or the death of Kamla Devi in the accident but has denied that she used to earn Rs.3000/- a month. It has been alleged that the deceased was travelling in the truck as a labourer to unload the bricks which were being carried in the truck. The rash and negligent driving on the part of truck has not been replied.

The insurer in its reply has alleged that deceased was an un-authorized passenger on board the vehicle and her risk was not covered by the policy. It has also been alleged that the truck was being driven by a person, who did not possess a valid and effective driving license.

The learned Tribunal returned the finding that the accident had taken place due to rash and negligent driving of the truck driver. It has also been held that Kamla Devi, mother of the petitioners died in the accident and she was not an unauthorized passenger in the truck. The man who was driving the truck at the time of accident was holding a valid driving license. Learned Tribunal has ultimately allowed the petition as noticed above.

I have heard the learned counsel for the parties and have gone through the record.

The learned counsel for the owner has submitted that the Tribunal has erred in returning the finding that accident has taken place due to rash

and negligent driving of the driver of the truck and Kamla Devi mother of the claimants has died in the accident. He has submitted that excess amount has been awarded to the claimants. The learned counsel for the petitioner-claimant supported the award by adopted the reasoning given by the Tribunal in the impugned award. The learned counsel for respondent No.3 has supported the submissions made on behalf of owner of the truck.

The petitioners in para 24 of the petition have given the details of the accident. It has been specifically pleaded that accident in question occurred due to rash and negligent driving of the driver of the truck. Respondent No.1 filed the reply and has admitted that deceased was traveling ill-fated truck at the time of accident and on the ill-fated day the deceased was taken in the truck by driver to help him in loading and unloading of construction material with the consent and approval of the owner as coolie . The truck was insured with respondent No.2. The petitioners/claimants have examined PW-1 Dharam Dass , Head Constable who has proved Ex.P-1, FIR No.203/96. PW-3 Vidya Devi was the next friend of the minor petitioners. She has stated that monthly income of Kamla Devi was Rs.2500/- and she was 25 years old. She has stated that her daughter Kamla and her husband died in the accident which took place on 15.10.1996. PW-4 Dr. D.K. Ghosh has proved Ex.PW-4/A post mortem report of Kamla Devi. RW-1 is Ram Gopal Dayia who has proved Ex. R-1 cover note of the policy of the truck, Ex.R-4, copy of Registration Certificate. He has also deposed that deceased was employed on daily wages at the rate of Rs.55/- per day whenever she was engaged as labourer. He has stated that driving license of the driver was lost in the accident. The truck had rolled down the road and fallen about 1000 feet below the road level. He has denied the suggestion in the cross-examination that the driver of the truck did not possess a valid and

effective driving license. The Tribunal awarded a sum of Rs.1,71,584/- along with interest at the rate of 12% per annum as stated above. FIR Ex.P-1 establishes that accident took place because of excessive speed of the vehicle and careless driving on the part of the driver. Therefore, negligence of the driver has been proved. The Tribunal has correctly returned the finding that driver of the truck was negligent at the time of accident. The deceased was aged 30 years which has been proved from post mortem report Ex.PW-4/A. This evidence has not been rebutted by the respondents. The Tribunal by applying the principles of Workmen's Compensation Act, 1923 has held that petitioners-claimants are entitled to a sum of Rs.1,71,583.50 or say Rs.1,71.584/- as compensation on account of death of Kamla Devi their mother. The compensation amount has been ordered to be paid by both the respondents and to be shared equally by the petitioners. A Division Bench of Kerala High Court in para 12 of the judgment ***K.R.Visalakshi and others vs. Pookodan Hamza and others, AIR 1989 Kerala 192*** **has held:-**

> "***The driver having met with an accident and suffered injuries during the course of his employment, albeit due to his negligence, is entitled to claim compensation under the Workmen's Compensation Act. The insurer has statutory duty to cover the liability of the owner of the vehicle to pay such compensation. Section 110AA of the M.V. Act gives an option to the injured employee to raise his claim either under the Motor Vehicles or the Workmens' Compensation Act. If he had filed the claim under the latter statute, he could not have been denied compensation for the reason that he was himself negligent. The only injury would have been whether the accident occurred out of an in the***

course of employment. Before the alternative forum also, he must be entitled to enforce the same claim on the same grounds and the same standard."

Therefore, compensation awarded by the Tribunal is just and reasonable. It has not been disputed by any party that by applying the principles of Workmen's Compensation Act, 1923 excess amount has been awarded to the petitioners-claimants. Therefore, compensation awarded to the petitioners-claimants by Tribunal is just and reasonable. No case for interference has been made out.

No other point was urged.

In view of the above discussion, the appeal is dismissed. Impugned award is upheld with no order as to costs.

(Kuldip Singh)
Judge

April 30, 2007
(sks)